APPENDIX

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JOSEPH ESPINOSA, CHARLES SHOBE, MORTON L. DUNKIN, and GENERAL CONFERENCE CORPORATION OF SEVENTH-DAY ADVENTISTS,
Plaintiffs-Appellees,
vs.
DAVID RUSK, Mayor; PATRICK BACA, JOE R. ABEYTA, MEL ARAGON, THOMAS W. HOOVER, SANDRA L. WEST, ALAN B. REED, JO McALEESE, JIM DELLENEY, MARION M. COTTRELL, members of the City Council of the City of Albuquerque, New Mexico; and BOB V. STOVER, Chief of Police of the City of Albuquerque, New Mexico,
Defendants-Appellants.

No. 79-1477

Appeal from the United States District Court
for the District of New Mexico
D.C. No. 78-915-B

George R. "Pat" Bryan, III, City Attorney, City of Albuquerque, New Mexico (Susan Green, Assistant City Attorney, City of Albuquerque, New Mexico, on the briefs) for Defendants-Appellants.

Lee Boothby of Johns, Carson & Boothby (Warren L. Johns, Walter E. Carson, Robert W. Nixon of Johns,

Carson & Boothby with him on the briefs), Washington, D.C., for the Plaintiffs-Appellees.

Before BARRETT, DOYLE and McKAY, Circuit Judges.

DOYLE, Circuit Judge.

The issue before us is whether an ordinance of the City of Albuquerque, New Mexico, as applied to the plaintiffs, violates the first and fourteenth amendments of the Constitution of the United States. The ordinance involves licensing and regulation of solicitation carried on by charitable organizations including some religious groups. The ordinance is numbered 72-1955. [sic]

The Seventh Day Adventist Church challenges the application of the ordinance to its annual solicitation drive in Albuquerque. The drive is known as the Ingathering. The money received in the drive is used for the support of various activities of the Adventist Church. These activities include medical, community, evangelical and educational services[1]. The Church maintains that all of these activities are part of its religious mission and thus are not subject to the ordinances' regulation; that such is prohibited by the Free Exercise of Religion Clause of the first amendment to the Constitution. The mentioned clause of the Constitution is as follows:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

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[1] Some of the monies raised are used for the purchase of food, clothing and shelter for those in need.

[1a] The due process and equal protection clauses of the fourteenth amendment restrict the state and city legislative bodies from encoraching [sic] on the free exercise of religion.

The church maintains that all of its activities serve to spread the religious message of the Church.

The ordinance purports to exempt "religious" activities but does not exempt secular activities.

The controversy commenced when the Church contacted the City for the purpose of ascertaining whether the ordinance applied to the activities of the Church - the Ingathering. The Church provided the City with certain information required by the ordinance but refused to submit an application for a permit. When the City informed the Church that many of the activities which were being carried on were "secular" and that it was required to conform to the permit requirement, the present action challenging the constitutionality of the ordinance was filed.

The suit sought injunctive relief against the enforcement of the ordinance. Based on a stipulation of the parties, the district court entered a preliminary injunction which allowed the Church to continue with its activities during the pendency of the action. Later the cause was submitted to the court on a stipulation of the facts. Oral arguments were had and a judgment in favor of the Church was entered. The City was permanently enjoined from enforcing its ordinance insofar as the Ingathering program was concerned.

The ordinance undertakes to define the areas in which churches are exempt. These include solicitations by religious groups solely for "evangelical, missionary or religious but not secular purposes." The ordinance also defines the term secular as "not spiritual or ecclesiastical, but rather relating to affairs of the present world, such

as providing food, clothing, and counseling." The City's determination was that the ordinance applied to the Church since it was soliciting funds for "secular" rather than for purely "religious or evangelical" purposes.

Compliance with the ordinance requires the payment of a $25.00 fee plus the filing of an application for a permit which calls for information as to the identity and address of the organization and its national and local officers, its purpose, the method of solicitation and the purposes for which funds are solicited. Also required is the time period during which solicitation will be pursued. In addition there must be furnished a financial statement.[2]

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[2] Section 8. *Application for a Permit - Filing - Content - Requirements.* An application for a permit for a charitable organization shall be filed as prescribed by rules and regulations which the Board may adopt and shall contain the following documents and information:

A. The name of the charitable organization and the name under which it intends to solicit contributions.

B. The names and addresses of its national and local directors, trustees, and officers and local key persons.

C. The location of the organization's financial records.

D. Methods by which solicitation will be made, including a statement as to whether such solicitation is to be conducted by voluntary unpaid solicitors, by paid solicitors, or both, and a narrative description of the promotional plan together with copies of all advertising material which has been prepared for public distribution by any means of communication and any location of any telephone solicitation facilities; solicitation by means of coin boxes or receptacles must be expressly authorized by the Board.

E. The names and address of any professional fund raisers who are acting or who have agreed to act on behalf of the charitable organization together with a statement setting forth the terms of the arrangements for compensation to be paid the professional fund raisers.

The district court determined that the ordinance as applied to the Church was invalid in that it employed a religious test in the exemption in Sec. 3 (a) of the ordinance for "evangelical missionary or religious but not secular purposes". A decision as to whether a cause was religious or secular was deemed to be a religious test.

Such a determination is contrary to the first and fourteenth amendments. The decision of the Supreme Court in Cantwell v. Connecticut, 310 U.S. 296 (1943) was deemed

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2. (cont'd.)

F. The general purpose for which the charitable organization is organized.

G. Where and when the organization was legally established, the form of its organization, and its federal tax exempt status.

H. The purposes for which the contributions to be solicited will be used, the total amount of funds proposed to be raised thereby, and the use or disposition to be made of any receipts therefrom.

I. The period of time during which the solicitation will be made.

J. A financial statement of any funds collected for charitable purposes by the applicant for the preceding fiscal year. Such statement shall set forth the amount of money raised and the cost of solicitations and final distribution of the balance by major category. The financial statement shall be submitted on a uniform reporting form provided by the Board.

K. Whether the organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions.

L. Such other information as may be reasonably required by the Board shall be in the public interest provided that disclosure of names of donors or amounts of contributions shall not be required.

If there is any change, while any application is pending in fact, policy, or method that would alter the information given in the application, the applicant shall notify the Board in writing thereof within five days, excluding Saturdays, Sunday, and legal holidays after such change.

by the trial court to be controlling. In *Cantwell* the Supreme Court held that the application of a statute which prohibited solicitations not found to be for religious causes was invalid. The statute in Cantwell prohibited solicitations

> "for any alleged religious . . . cause, from other than a member of the organization for whose benefit such person is soliciting . . . unless such cause shall have been approved by the secretary of the public welfare council. Upon application . . . in behalf of such cause, the secretary shall determine whether such cause is a religious one . . . and, if he shall so find, shall approve the same and issue . . . a certificate. . . .

310 U.S. at 301.

As we have previously noted the first amendment declares that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." This provision is applicable to the states through the fourteenth amendment. Murdock v. Pennsylvania, 319 U.S. 105 (1943).

Cantwell is applicable to the present facts because the officials there were called upon, as in the present case, to ascertain and determine whether the proposed solicitations were for religious purposes. If the application failed the test there was no certification and no solicitations could legally take place. The Supreme Court held that the statute constituted a prior restraint on the free exercise of religion. It was said:

> The general regulation, in the public interest, of solicitation which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose.

> Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise.
>
> It will be noted, however, that the Act requires an application to the Secretary of the Public Welfare Council of the State; that he is empowered to determine whether the cause is a religious one, and that the issue of a certificate depends upon his affirmative action. If he finds that the cause is not that of religion, to solicit for it becomes a crime. He is not to issue a certificate as a matter of course. His decision to issue or refuse it involves appraisal of facts, the exercise of judgment, and the formation of an opinion. He is authorized to withhold his approval if he determines that the cause is not a religious one. Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the first amendment and included in the liberty which is within the protection of the fourteenth.

310 U.S. at 305.

Albuquerque seeks to distinguish *Cantwell* on the ground that the consequences of the religious/secular distinction in its ordinance does not result in a prohibition of the right to solicit but rather results only in regulation in the interest of preventing fraud. It is argued that if the solicitation is determined to be secular rather than religious it is merely necessary to apply for a permit (and be subject to the scrutiny of an official). No blanket prohibition is involved.

It is argued in addition that the present ordinance does not, as in *Cantwell*, allow an administrative official to make decisions as to whether a religious cause conformed to "reasonable standards of efficiency." It is said that this granted overbroad discretion, a condition which is not

here present. The ordinance which we consider is said to not require a determination as to what is religious, for the purpose of censoring the activity, but merely for imposing reasonable regulations for preventing fraud and other similar conduct. But *Cantwell* found that an administrative determination as to what was religion or religious was objectionable.

The foregoing overlooks the fact that this is a very sensitive area. The setting up of a city agency to make distinctions as to that which is religious and that which is secular so as to subject the latter to regulation is necessarily a suspect effort. It may be that applied to an organization which can be shown to commit atrocities in the name of religion or with a religious cloak would present a different problem. We do not, however, have this condition here. The conception of religion entertained by the City in this very case was that it had to be purely spiritual or evangelical. Thus, the charitable activity of the church having to do with the feeding of the hungry or the offer of clothing and shelter to the poor was deemed to be subject to regulation. This broad definition of secular is part of the problem. Whether a less vigorous *construction* would result in a different conclusion is not, of course, before us and is not a proper subject for us to consider. Inasmuch, however that the challenge is to the ordinance *as applied* we must conclude that the present effort is an invalid interference.

The drafters of the ordinance sought to accomodate [sic] free exercise by exempting evangelical, missionary or religious but not secular causes. Such an effort is a difficult one because of the continuing necessity for making judgments as to what is or is not religious. Thus, although the ordin-

ance does not express any anti-religious effort or object, it is objectionable because it involves municipal officials in the definition of what is religious.

For this court to condemn all regulation of religious solicitation in broad terms would be out of harmony with the decided cases. The City retains its secular mission which is to protect its citizenry from fraudulent or overreaching solicitations. The opinion of the Supreme Court in Hynes v. Mayor of Oradell, 425 U.S. 610, 619 (1976) recognizes this. Its teaching is to be gleaned from the following statement:

> "A narrowly drawn ordinance, that does not vest in municipal officials the undefined power to determine what message residents will hear, may serve these important interests without running afoul of the First Amendment."

See also Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 100 S.Ct. 826 (1980); Breard v. Alexandria, 341 U.S. 622 (1951); Thomas v. Collins, 323 U.S. 516 (1945); Martin v. Struthers, 319 U.S. 141 (1943).

It is well to review this further admonition contained in the *Cantwell* opinion. The Court said:

> Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. Certainly penal laws are available to punish such conduct. Even the exercise of religion may be at some slight inconvenience in order that the state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.

310 U.S. at 306.

Regulations, however, which restrict the exercise of first amendment rights by requiring prior approval are going to be suspect, and will face an unfavorable presumption in regard to constitutional validity. Bantam Books v. Sullivan, 372 U.S. 58 (1963). Any standard set forth must be "susceptible of objective measurement," Keyishian v. Board of Regents, 385 U.S. 589, 603-604 (1967), and "precision of regulation must be the touchstone." NAACP v. Button, 371 U.S. 415, 438 (1963). Sufficient procedural safeguards must be present. See Freedman v. Maryland, 380 U.S. 51 (1965). Regulation which burdens the free exercise of religion and poses a threat of entanglement between the affairs of Church and State must be justified by a compelling state interest, Sherbert v. Verner, 374 U.S. 398 (1963), and there must not exist less restrictive and entangling alternatives. Waltz v. Tax Commission, [sic] 397 U.S. 664 (1970). There are some recent decisions which have considered the validity of solicitation ordinances in light of these constitutional standards. *See* International Society for Krishna Counsciousness [sic] v. Rochford, 585 F.2d 263 (7th Cir. 1978); Fernades v. Limmer, 465 F.Supp. 493 (N.D. Tex. 1979); Cherris v. Amundson, 460 F.Supp. 326 (E.D. La. 1978); Swearson v. Meyers, 455 F.Supp. 88 (D. Kan. 1978); International Society for Krishna Consciousness v. Griffin, 437 F.Supp. 666 (W.D. Pa. 1977).

Judge Bratton's opinion in the district court reached the conclusion which we have come to and we do not disagree with any of the reasoning which was employed by him.

The judgment of the district court is affirmed.

No. 79-1477 - JOSEPH ESPINOSA, et al. v. DAVID RUSK, et al. BARRETT, Circuit Judge, dissenting:

I respectfully dissent.

The conscientious District Court grappled with the difficult factual problem presented in this case in reaching the legal conclusion, affirmed by the majority opinion, which has firm rooting in constitutional law. The particular problem relates to the definition of "religious" and "secular" activities and the interrelationship one to another. This, in turn, is bound up in one of the most trying and vexing tasks found in constitutional law — that of defining "religion" for purposes of First Amendment rights.

In the consideration of whether the "secular" law constitutes an impermissible burden on the free exercise of "religion" the State must show a compelling reason to enforce its law. This is difficult because the crux of many decisions seems to not only recognize the right of the individual to *define* his *own* religion and to exercise his *individual* beliefs therein free of government restraint or compulsion, but he is further protected in *acting upon* those beliefs even in the face of non-discriminatory secular enactments. The burden was traditionally on the person contending that his religious activity would not interfere with a recognized state interest. That burden, however, has shifted. Today it is the obligation of the state to show that both the religious belief and practice will endanger a state interest and that the restraining action imposed cannot be supplanted by any reasonable alternative. *United States v. Seeger*, 380 U.S. 163 (1965); *Sherbert v. Verner*, 374 U.S. 398 (1963). No advantage can accrue to orthodox religious beliefs under the religious

belief test announced in *United States v. Seeger, supra.* The breadth of the new test finds room for "religious" beliefs protected by the Free Exercise Clause relating to topics such as the use of drugs in religious exercise, refusal to work on Sabbaths, opposition to all war and blood transfusions.

In my view, the very breadth of the "religious" definition so recognized requires a *common sense* approach to the so-called "secular" entanglement therein. It is illogical, in my view, to simply prohibit the enforcement of a state law designed to protect the citizens from fraudulent solicitations in all cases where the "religious" cult, sect or organization proclaims that practices which have been historically secular in these United States, i.e., government aid to the poor, to the sick and the homeless, are, for statutory exemption purposes, "religious" activities because of the announced beliefs.

I believe that the accommodation between church and state so often recognized in the realm of the prohibition against the establishment of religion proclaimed in the First Amendment — the Establishment Clause — can and should be logically applied in cases such as that presented here involving the Free Exercise Clause. The Supreme Court has consistently recognized that a certain amount of church-state entanglement will exist. *Abington School Dist. v. Schempp,* 374 U.S. 203, 212 (1963); *Engel v. Vitale,* 370 U.S. 421, 434 (1962). In the context of those decisions, the critical issue was not whether there exists some entanglement but rather whether the entanglement is excessive and thus violative of the Establishment Clause.

Just as the Supreme Court has recognized that the

line of separation of church and state required under the Establishment Clause is neither straight nor easily determined, *Committee for Public Education & Religious Liberty v. Regan*, 48 U.S.L.W. 4168 (Feb. 20, 1980), and that the First Amendment does not forbid all mention of religion in public schools, but rather that religion be neither advanced or inhibited, *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973), I would impose similar criteria to the case at bar and pose this inquiry: Does the Albuquerque ordinance challenged here impose an *undue, excessive restraint* upon the Seventh Day Adventist Church's religious activity [its annual solicitation drive in Albuquerque] by requiring a prior application for permit to solicit for funds intended for "secular activities"? I would answer the inquiry in the negative. In my view, then, the ordinance passes constitutional muster. I believe this to be so because the City's determination that the solicitation of funds for medical, food, clothing and shelter *are secular* is common-sensed and rational. It does not impose an impermissible religious test violative of the mandate of *Cantwell v. Connecticut*, 310 U.S. 296 (1940). That case involved solicitations of funds going directly to the heart of religion. A distinction must be drawn, however, between those activities characteristic of secular life, historically of primary and compelling concern of the community and government, which are also pursued by religious organizations. Thus, I would sustain the Albuquerque ordinance, insofar as it pertains to those activities overwhelmingly secular in nature, in keeping with the City's compelling interest in preventing fraud. The burden cast upon a religious organization in meeting the requirements of the licensing ordinance is *de minimus* in relation to the City's com-

pelling interest in preventing fraudulent solicitations of its residents.

FILED: United States Court of Appeals, Tenth Circuit, Oct. 21, 1980. Howard K. Phillips, Clerk.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOSEPH ESPINOSA, CHARLES SHOBE,
MORTON L. DUNKIN, and the
GENERAL CONFERENCE CORPORATION
OF SEVENTH-DAY ADVENTISTS,
Plaintiffs,

vs. CIV 78-915-B

DAVID RUSK, Mayor; PATRICK BACA,
JOE R. ABEYTA, MEL ARAGON,
THOMAS W. HOOVER, SANDRA L. WEST,
ALAN B. REED, JO McALEESE,
JIM DELLENEY, MARION M. COTTRELL,
members of the City Council of
the city of Albuquerque, New Mexico;
and BOB V. STOVER, Chief of Police
of the city of Albuquerque, New Mexico,
Defendants.

MEMORANDUM OPINION

This matter comes on for consideration upon the Motion of the plaintiffs who are members of the Seventh-Day Adventist Church, and the church organization itself, for a preliminary and permanent injunction prohibiting the defendants, including the Mayor of the City of Albuquerque and the members of the Albuquerque City Council, from enforcing the Albuquerque city ordinance relating to charitable solicitations against them on the grounds that such enforcement violates the First and Fourteenth Amendments to the United States Constitution. The plaintiffs have brought this suit for injunctive and declaratory relief pursuant to 42 U.S.C. § 1983, and jurisdiction is based on 28 U.S.C. § 1343(3).

The Court having considered the argument presented at the hearing in this matter, as well as the memoranda filed, it is concluded the Motion of the plaintiffs is well taken.

The parties in this case have stipulated to the pertinent facts surrounding their dispute. As noted, all the plaintiffs with the exception of the church organization itself, are individual members of the Seventy [sic] -day Adventist Church, and in various roles are actively engaged in the Church's Ingathering Program. The Ingathering Program is an official international religious program of the church involving literature distribution and the solicitation and collection of funds, which money is spent to provide food, clothing, shelter, health services, education, and other community services. This program is considered by the members of the religion an essential part of the evangelistic mission of the Adventist Church. The City of Albuquerque, through the City Attorney's office, has made clear that it considers the Seventh-day Adventist Church to be a "charitable organization" within the meaning of City Ordinance 72-1975. It has stated that because of the "secular" nature of the Adventists' Ingathering Program, it will require the church to obtain a permit prior to soliciting contributions. A temporary restraining order was stipulated to by the parties, and the Adventists were able to carry on their Ingathering program during the month of December without complying with the ordinance. The Order has, by agreement of the parties continued in effect pending this decision in the matter.

The city ordinance here in question, 72-1975 relates to charitable solicitations and attempts to protect the general public from fraudulent and dishonest conduct by requiring

solicitors to obtain a permit from the Albuquerque Solicitations Review Board (Board). Among the exemptions provided by the ordinance are solicitations by religious organizations if such are conducted among the members voluntarily or if such are for "evangelical, missionary, or religious but not secular purposes." *Section 10-9-3(A).* The ordinance further defines "secular" as meaning

> "not spiritual or ecclesiastical but rather relating to the affairs of the present world, such as providing food, clothing and counselling."
>
> *Section 10-9-2(L).*

If an organization is not exempt, the ordinance requires that it file an application for a permit, including such information as the name of the organization, the name under which will [sic] it will solicit, the names and addresses of its national and local directors and officers, the location of its financial records, the methods by which the solicitations will be made, the names and addresses of any professional fund raisers acting on its behalf, the purpose of the organization and where and when it was established, the purposes for which the contributions will be used, the time during which the solicitation will be made, a financial statement of charitable collections for the preceeding [sic] year and whether the organization is authorized by any other governmental body to solicit contributions. *Section 10-9-8.* The Board is also authorized to request "such other information as may be reasonably required by the Board . . ." *Section 10-9-8(L).*

The application is then reviewed by the Board to determine if the cost of the solicitation will exceed 30% of total gross amount to be raised, if the advertising material and promotional plan are false, misleading or deceptive and

if the organization has been convicted of a crime involving solicitations in the past 10 years. *Section 10-9-10.* If the determinations are in the negative or if 45 days pass without action, the permit is granted at the cost of $25.00 to the applicant. If the Board finds that any of the above requirements are not met, it must notify the applicant, and state the reasons for its denial of the permit. *Section 10-9-11(c).* The applicant may, within the next twenty days, petition for reconsideration and is entitled to a hearing.

The plaintiffs claim that the provision of the ordinance defining "secular" and its application to their Ingathering Program violates the First Amendment free exercise clause in that it amounts to a censorship of religion. They also challenge the exemption scheme in the ordinance which allows charitable organizations to solicit funds from its own members without a permit, as favoring large, well-established religions in violation of the First Amendment establishment and Fourteenth Amendment equal protection clauses. Finally, the plaintiffs claim that the procedures of the Board for granting or denying permit applications constitute an overbroad delegation of authority to an administrative body in violation of the procedural due process requirements of the Fourteenth Amendment.

Before proceeding to the merits, it should be noted that there are no prosecutions for violation of the city ordinance currently pending and thus the abstention doctrine announced in *Younger v. Harris*, 401 U.S. 37 (1971) does not preclude the Court's consideration of this matter. *Doran v. Salem Inn, Inc.*, 422 U.S. 922 (1975); *Steffel v. Thompson*, 415 U.S. 452 (1974).

The first claim of the plaintiffs, that the city ordinance violates the Free Exercise Clause of the First Amendment, and the Fourteenth Amendment is based on the definition of "secular" in the ordinance. It is plaintiffs' contention that the city has improperly undertaken to limit and define what is religion and what is not. Specifically, the plaintiffs claim that the Ingathering Program of the Seventh-day Adventist Church which has, as one of its aims, the providing of food, shelter and clothing is an essential part of their religious mission, and yet, under the city ordinance it is defined as secular. The consequence of this for the plaintiffs is that they cannot take advantage of the religious solicitation exemptions in the statute, and must therefore apply and pay for a permit.

The City argues that it has a valid interest in regulating the solicitation of funds for what it defines as secular purposes. It further argues that the fact that this valid regulatory interest at times impinges on the activities of religious groups does not make it improper. According to the city, the effective regulation of charitable solicitations requires the distinctions in the ordinance.

In *Cantwell v. Connecticut*, 310 U.S. 296 (1940), the Supreme Court struck down as unconstitutional as applied a Connecticut statute which prohibited solicitations

> "... for any alleged religious ... cause, from other than a member of the organization for whose benefit such person is soliciting ... unless such cause shall have been approved by the secretary of the public welfare council. Upon application ... in behalf of such cause, the secretary shall determine whether such cause is a religious one ... and, if he shall so find, shall approve the same and issue ... a certificate ..." 310 U.S. at 301.

Several Jehovah's Witnesses had been arrested and convicted for soliciting funds and distributing literature without the prior approval of the secretary of the public welfare council, as required by the statute. They had defended on the grounds that the statute was unconstitutional. In reversing the judgments of conviction, the Court found that

> ". . . to condition the solicitation of aid for the perpetuation of religious views or systems upon a license, the grant of which rests in the exercise of a determination by state authority as to what is a religious cause, is to lay a forbidden burden upon the exercise of liberty protected by the Constitution." 310 U.S. at 307.

The Court did however approve some state regulation of solicitation by religious groups. It found nothing constitutionally offensive in requiring a solicitor to "establish his identity and authority to act for the cause he purports to represent." 310 U.S. at 306. Nor is the state prohibited from regulating the "time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience." *Ibid.* The Court observed that "general regulation . . . which does not involve any religious test . . . is not open to any constitutional objection . . ." 310 U.S. at 305.

The City argues that *Cantwell, supra* is distinguishable on the grounds that the city ordinance does not leave to any administrative officer or body the authority to decide what is a bona fide religious cause. This is true, but it is not a relevant difference. It does not alter the posture of the ordinance with regard to the First Amendment to set out specifically in it what in *Cantwell, supra,* was left to an administrative official. By defining "secular," the or-

dinance specifically eliminates solicitations for particular activities from the sphere of "religious purposes," and in that way, embodies a religious test. This comes clearly within the prohibition stated in *Cantwell, supra.*

In support of the ordinance the city relies upon *Gospel Army v. City of Los Angeles*, 163 P.2d 704 (Calif., 1945), in which the California Supreme Court, in a 4-3 decision, upheld the constitutionality of an ordinance similar to that being considered here. The majority opinion found that solicitation for charitable purposes was a proper area of concern for the city of Los Angeles and that the religious motivation of some solicitors did not exempt that group from the ordinance requirements. It distinguished *Cantwell, supra*, on the grounds that it did not involve solicitations for charitable purposes, but rather for the support of the religious group itself. This is correct, but it ignores the fact that some charitable solicitations are an integral part of a religious system. When such is the case there seems to be no reason to distinguish between solicitations that will directly support a religious group and those that support a separate, but still religious activity of the group, though the direct benefit is to others.

It is clear that the city could require some form of registration and identification and exact a nominal fee from the Adventists. *Murdock v. Pennsylvania*, 319 U.S. 105 (1942). And the plaintiffs have stipulated that they would voluntarily provide such information to the city. Thus, the real pitfall of the ordinance is that in effect it defines what is religious and what is not, and requires those whose activities it deems "secular" to obtain a permit prior to soliciting for funds. That kind of regulation is impermissable.

Therefore the Court finds that the city ordinance as applied, embodies a religious test in violation of the First and Fourteenth Amendments and that the City should be prohibited from enforcing the statute against the Seventh-day Adventist Ingathering Program. Having so found the Court need not consider the other constitutional challenges raised by the plaintiffs.

An order will be entered in accordance herewith.

HOWARD BRATTON
United States District Judge

FILED: United States District Court, Albuquerque, New Mexico, Mar. 22, 1979. Jesse Casaus, Clerk.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOSEPH ESPINOSA, CHARLES SHOBE, MORTON L. DUNKIN, and the GENERAL CONFERENCE CORPORATION OF SEVENTH-DAY ADVENTISTS, Plaintiffs,	)	No. CIV 78-915-B
vs.	)	
DAVID RUSK, mayor; PARTRICK [sic] BACA, JOE R. ABEYTA, MEL ARAGON, THOMAS W. HOOVER, SANDRA L. WEST, ALAN B. REED, JO McALEESE, JIM DELLENEY, MARION M. COTTRELL, members of the City Council of the City of Albuquerque, New Mexico; and BOB V. STOVER, Chief of Police of the City of Albuquerque, New Mexico, Defendants.	)	

PERMANENT INJUNCTION

THIS MATTER having come before the Court upon the Plaintiff's Motion for a Preliminary Injunction, a Permanent Injunction, and a Declaratory Judgment, and the Court having considered the argument of counsel, the Memoranda filed, and having issued a Memorandum Opinion in the above-styled cause,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that as applied to Plaintiffs, the exemption for those religious organizations which solicit for "evangelical, missionary or religious but not secular purposes" contained in Section 10-9-3(A) of Albuquerque Ordinance

No. 72-1975, embodies a religious test in violation of the First and Fourteenth Amendments to the United States Constitution.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants shall be and are hereby permanently enjoined from enforcing said ordinance against the Seventh-Day Adventist Ingathering Appeal Program.

HOWARD BRATTON
United States District Judge

SUBMITTED BY:
JOHN WILLIAMS
Local Counsel for Plaintiffs
APPROVED AS TO FORM:
SUSAN GREEN
Attorney for Defendants

FILED: United States District Court, Albuquerque, New Mexico, Mar. 30, 1979. Jesse Casaus, Clerk. Entered on Docket Mar. 30, 1979.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

SEPTEMBER TERM - October 21, 1980

Before Honorable James E. Barrett, Honorable William E. Doyle, and Honorable Monroe G. McKay, Circuit Judges

JOSEPH ESPINOSA, CHARLES SHOBE, MORTON L. DUNKIN and GENERAL CONFERENCE CORPORATION OF SEVENTH-DAY ADVENTISTS, Plaintiffs-Appellees,	)	
vs.	)	JUDGMENT
DAVID RUSK, Mayor, PATRICK BACA, JOE R. ABEYTA, MEL ARAGON, THOMAS W. HOOVER, SANDRA L. WEST, ALAN B. REED, JO McALLEESE, JIM DELLENEY, and MARION M. COTTRELL, Members of the City Council of the City of Albuquerque, New Mexico, and BOB V. STOVER, Chief of Police of the City of Albuquerque, New Mexico, Defendants-Appellants.	)	No. 79-1477 (D.C. No. 78-915-B)

This cause came on to be heard on the record on appeal from the United States District Court for the District of New Mexico, and was argued by counsel.

Upon consideration whereof, it is ordered that the judgment of that court is affirmed.

HOWARD K. PHILLIPS,
Clerk

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JOSEPH ESPINOSA, CHARLES SHOBE, MORTON L. DUNKIN, and GENERAL CONFERENCE CORPORATION OF SEVENTH-DAY ADVENTISTS, Plaintiffs-Appellees,	)
vs.	) No. 79-1477
DAVID RUSK, Mayor; PATRICK BACA, JOE R. ABEYTA, MEL ARAGON, THOMAS W. HOOVER, SANDRA L. WEST, ALAN B. REED, JO McALEESE, JIM DELLENEY, MARION M. COTTRELL, members of the City Council of the City of Albuquerque, New Mexico; and BOB V. STOVER, Chief of Police of the City of Albuquerque, New Mexico, Defendants-Appellants.	)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that DAVID RUSK, Mayor; PATRICK BACA, JOE R. ABEYTA, MEL ARAGON, THOMAS W. HOOVER, SANDRA L. WEST, ALAN B. REED, JO McALEESE, JIM DELLENEY, MARION M. COTTRELL, members of the City Council of the City of Albuquerque, New Mexico; and BOB V. STOVER, Chief of Police of the City of Albuquerque, New Mexico, the Defendants-Appellants above named, hereby appeal to the Supreme Court of the United States from the Judgment of the United States Court of Appeals for the Tenth Circuit, affirming the judgment granting a permanent injunction, entered on October 21, 1980.

This appeal is taken pursuant to 28 U.S.C. §1254(2).

George R. "Pat" Bryan, III
Counsel for Defendants-Appellants
City Attorney
P. O. Box 1293
Albuquerque, New Mexico 87103

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December, 1980, copies of this Notice of Appeal to the Supreme Court of the United States were mailed, by depositing the document in a United States mailbox, with first-class postage prepaid, addressed to Mr. John Williams, Esq., 1202 Pennsylvania, N.E., Suite D, Albuquerque, New Mexico 87103, and to Mr. Lee Boothby, Johns, Carson & Boothby, 6930 Carroll Avenue, Suite 629, Takoma Park, Maryland 20012, counsel of record for Plaintiffs-Appellees. I further certify that all parties required to be served have been served.

George R. "Pat" Bryan, III
Counsel for Defendants-Appellants

FILED: United States Court of Appeals, Tenth Circuit, December 27, 1980, Howard K. Phillips, Clerk.

ORDINANCE NO. 72-1975

REGULATING CHARITABLE SOLICITATIONS; ESTABLISHING THE ALBUQUERQUE SOLICITATIONS REVIEW BOARD; REQUIRING A CHARITABLE SOLICITATIONS PERMIT; PROVIDING PROCEDURES FOR THE ISSUING, DENYING, REVOKING AND SUSPENSION OF SUCH PERMITS; AND REPEALING ORDINANCE NO. 2133.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

Section 1. *Purpose of This Ordinance.* The purpose of this ordinance is to protect the general public and charitable organizations in the City of Albuquerque; to require public disclosure of facts relating to organizations which solicit from the public for charitable purposes; and to prevent deceptive and dishonest statements and fraudulent conduct in any solicitation for and in the name of any charitable purpose. This ordinance is not intended to control commercial activities of any organization unless such activities involve a solicitation for and in the name of a charitable purpose. Nor is this ordinance intended to regulate any organization's program activities which are separate from such a solicitation.

Section 2. *Definitions.* When used in this ordinance, unless the context otherwise requires:

A. "Board" means the Albuquerque Solicitations Review Board created by Section 5 of this ordinance, or its authorized representatives.

B. "Charitable organization" means:

1. any benevolent, philanthropic, patriotic, health, educational, social, recreational, fraternal organization, or

any other person having or purporting to have a charitable nature; and

2. which solicits or solicits and collects contributions for any charitable purpose within the City of Albuquerque. Provided, however, that it shall be a rebuttable presumption that any organization granted 501(C) (3) status by the Internal Revenue Service is a charitable organization.

C. "Contribution" means the donation, promise or grant, for consideration or otherwise, of any money or property of any kind or value in the form of a direct gift or a sale and benefit affair which is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this ordinance means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights, and not merely that portion of the purchase price to be applied to a charitable purpose. Provided, however, that "contribution" shall not include donations of money or property or any other consideration to any political campaign on behalf of any candidate for public office or to influence the passage or defeat of a proposition submitted to a popular vote at an election. Nor shall "contribution" include any commercial activity conducted by any charitable organization unless it involves solicitation for and in the name of any charitable purpose.

D. "Compensation" means salaries, wages, fees, commissions, or any other remuneration or valuable consideration.

E. "Cost of solicitation" means and includes all costs, expenditures, debts, obligations, salaries, wages, com-

missions, fees, or other money or thing of value paid or incurred in making a solicitation for a direct gift or conducting a sale or benefit affair.

F. "Direct gift" shall mean and include an outright contribution of food, clothing, money, credit, property, financial assistance or other thing of value to be used for a charitable or religious purpose and for which the donor receives no consideration or thing of value in return.

G. "Key personnel" shall mean any officers, employees, or other personnel who are directly in charge of any of the fund raising activities of the charitable organization; and any officers or individuals maintaining custody of the organization's financial records and any officers or individuals who have custody of the contributions.

H. "Permit" means written authorization from the City of Albuquerque to conduct charitable solicitations.

I. "Person" means an individual, organization, group, association, partnership, corporation, or any combination thereof.

J. "Professional fund raiser" means any person who, for compensation, plans, conducts, or manages any drive or campaign in this City for the purpose of soliciting contributions for or on behalf of any charitable organization or charitable purpose and who is not a regular employee of that organization.

K. "Sale and benefit affair" shall mean and include, but not be limited to, athletic or sports event, bazaar, benefit, campaign, circus, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale, social gathering, theater, or variety show which the public is requested to patronize or attend, and to which

the public is requested to make a contribution for any charitable purpose connected therewith.

L. "Secular" means not spiritual or ecclesiastical but rather relating to the affairs of the present world, such as providing food, clothing and counselling.

M. "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing, in connection with which:

1. Any appeal is made for any charitable purpose; or

2. The name of any charitable organization is used as an inducement for making the contribution or consummating the sale; or

3. Any statement is made which implies that the whole or any part of the contribution or proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization. The solicitation shall be deemed completed when made, whether or not the person making it receives any contribution or makes any sale.

Section 3. *Exemptions.* Except as otherwise specifically provided in other sections of this ordinance, this ordinance shall not apply to the following:

A. Solicitations by religious organizations which are entitled to receive a declaration of current tax exempt status from the government of the United States and their duly organized branches or chapters, if the solicitations by such organization are conducted among the members thereof by other members or clergymen thereof, voluntarily, or if the solicitations are in the form of collec-

tions or contributions at the regular or special religious assemblies, meetings, or services of any such organization, or solicitations by such organizations solely for evangelical, missionary, or religious but not secular purposes.

B. Any organization which is organized and operated principally for charitable or religious or educational purposes, other than the raising of funds, when the solicitation of contributions is confined to the membership of the organization and when the solicitation is managed and conducted solely by officers and members of such organizations who are unpaid for such services.

The term "membership" shall not include those persons who are granted membership upon making a contribution as the result of a solicitation; and

C. Any charitable organization which solicits and collects contributions of no more than one thousand dollars in any one year period if all its fund raising functions are carried on by persons who are unpaid for their services.

D. Any solicitation conducted in writing by a national organization across interstate boundaries.

E. Solicitations by governmental or political subdivisions of the State of New Mexico and of the United States, if such solicitations are conducted solely in furtherance of the governmental purposes for which the governmental or political subdivision was created; provided that organizations connected with a governmental or political subdivision, but independently organized, shall not be exempt from the provisions of this ordinance.

F. Solicitations by or on behalf of schools, colleges or universities which solicitations are confined to alumni of the institution, their parents, or prior contributors to

the institution, whether or not such persons are members of any alumni association, or other organization, provided that persons conducting such solicitations are not compensated in connection with such solicitations with the exception of persons regularly employed by the institution.

G. Solicitations by or on behalf of communitywide religious or ethnic associations for charitable purposes, which solicitations are confined to members of the religious or ethnic group from which the association is formed, or prior contributors to the association, whether or not such persons are members of any association, provided that persons conducting such solicitations are not compensated in connection with such solicitations with the exception of persons regularly employed by the association.

Section 4. *Organization Ceasing to be Exempt.* Whenever any charitable organization intends to conduct or is conducting a charitable solicitation and ceases to be exempt under the provisions of Section 3, the organization shall obtain a permit as required under Section 7, within thirty days after the date it ceases to be exempt.

Section 5. *Solicitations Review Board.* The Albuquerque Solicitations Review Board is hereby established, and shall be composed of nine members, who shall be appointed by the Mayor with the advice and consent of the Council. No more than three of the members appointed to the Board shall be serving in any supervisory, advisory or policy-making capacity or as an employee of any charitable organization. One of the members of the Board shall be appointed Chairman by the Mayor to serve a one-year term. The President of the Better Business Bureau may be appointed as an ex-officio member without a vote. Of the initial appointments, three members shall be appointed to

terms ending January 1, 1977, three members shall be appointed to terms ending January 1, 1978, and three members shall be appointed to terms ending January 1, 1979; thereafter, the terms of all members shall be three years. Members shall serve without compensation. Upon request, the Mayor shall provide such staff assistance as is feasible to implement the requirements of this ordinance.

Section 6. *Powers and Duties of the Board.* The Board shall be granted the following powers and duties:

A. Adopt all rules and regulations necessary for the implementation of this ordinance.

B. Authorize, deny and suspend permits;

C. Make necessary investigations;

D. Request any information necessary for such investigations;

E. Establish and maintain a register of charitable organizations which have obtained permits;

F. Prepare an annual report, which shall be available to the public at a reasonable cost, listing all information relevant to the conduct of charitable solicitations during the preceding year in the City of Albuquerque, including organization names, amounts received during the fiscal year, and disbursements of collections by major category;

G. Determine whether or not an organization is exempt from the provisions of this ordinance and interpret upon request any provision of this ordinance.

Section 7. *Permit Required.* Except as otherwise provided in this ordinance no person may solicit contributions

on behalf of any charitable organization from persons in this City by any means whatsoever prior to the time the charitable organization has obtained a permit in accordance with this ordinance. No permit is required until March 1, 1976.

Section 8. *Application for a Permit - Filing - Contests - Requirements.* An application for a permit for a charitable organization shall be filed as prescribed by rules and regulations which the Board may adopt and shall contain the following documents and information:

A. The name of the charitable organization and the name under which it intends to solicit contributions;

B. The names and addresses of its national and local directors, trustees, and officers and local key personnel.

C. The location of the organization's financial records.

D. Methods by which solicitation will be made, including a statement as to whether such solicitation is to be conducted by voluntary unpaid solicitors, by paid solicitors, or both, and a narrative description of the promotional plan together with copies of all advertising material which has been prepared for public distribution by any means of communication and any location of any telephone solicitation facilities; solicitation by means of coin boxes or receptacles must be expressly authorized by the Board;

E. The names and addresses of any professional fund raisers who are acting or who have agreed to act on behalf of the charitable organization together with a statement setting forth the terms of the arrangements for compensation to be paid the professional fund raisers;

F. The general purpose for which the charitable organization is organized;

G. Where and when the organization was legally established, the form of its organization, and its federal tax exempt status;

H. The purpose for which the contributions to be solicited will be used, the total amount of funds proposed to be raised thereby, and the use or disposition to be made of any receipts therefrom;

I. The period of time during which the solicitation will be made;

J. A financial statement of any funds collected for charitable purposes by the applicant for the preceding fiscal year. Such statement shall set forth the amount of money raised and the cost of solicitations and final distribution of the balance by major category. The financial statement shall be submitted on a uniform reporting form provided by the Board;

K. Whether the organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions;

L. Such other information as may be reasonably required by the Board shall be in the public interest; provided that disclosure of names of donors or amounts of contributions shall not be required.

If there is any change, while any application is pending, in fact, policy, or method that would alter the information given in the application, the applicant shall notify the Board in writing thereof within five days, excluding Saturdays, Sundays, and legal holidays after such change.

Section 9. *Application - Signing.* The application, and

any other documents prescribed by the Board, shall be signed under oath of the president of the charitable organization, or his legal designee.

Section 10. *Examination by Board - Limitations on Costs of Solicitations - Other Requirements.* Upon receipt of an application, the Board shall immediately initiate an examination to determine that:

A. The cost of the solicitation for direct gifts shall not exceed thirty percent of the total gross amount to be raised, or for sale and benefit affairs shall not exceed seventy percent of the total gross amount to be raised; and of this seventy percent, not more than thirty percent of the total gross amount shall be paid for all compensation paid or to be paid to all key personnel, salesmen, solicitors, collectors, and professional fund raisers. If it appears that the cost of soliciting will exceed the percentage listed above, and except for that the permit would otherwise be granted, the Board may grant a permit to the charitable organization, upon a showing that special reasons make a cost higher than thirty percent or seventy percent, or thirty percent, respectively, reasonable in the particular case. When such a permit is issued, the amount, stated as a percentage of the total purchase price, that will be given to the charitable organization shall be disclosed to each person being solicited at the time of each solicitation.

B. The advertising material and the general promotional plan are not false, misleading, or deceptive.

C. The charitable organization has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving solicitations for or on behalf of a charitable organization in this City, State, or the United States within the past ten years.

D. In the case of application renewals, the organization has complied with all provisions of this ordinance during the preceding calendar year.

Section 11. *Procedure for Authorization or Denial of a Permit.*

A. Within 45 days of receipt of the application for a permit, the Board shall grant or deny the permit. If the Board neither grants nor denies the permit within 45 days of receipt of the application, the permit shall be deemed granted, unless the applicant has consented in writing to a delay.

B. If the Board affirmatively determines, upon inquiry and examination that the requirements have been met, it shall grant the permit.

C. If the Board determines, upon inquiry and examination, that any of the requirements have not been met, the Board shall notify the applicant that the application for the permit must be corrected with respect to the deficiencies specified. If the requested corrections are not made, the Board shall deny the permit, such denial shall include the findings of fact upon which the denial is based. The denial shall not become effective for twenty days during which time the applicant may petition for reconsideration and shall be entitled to a hearing.

Section 12. *Permit Fee - Duration - Renewal.* If the application is approved by the Board, the applicant shall pay the Treasurer of the City of Albuquerque the permit fee of twenty-five dollars ($25.00) for any new application under this ordinance and ten dollars ($10.00) for each renewal thereafter. The permit shall be effective for the period determined by the Board, but such period shall not

exceed one year. The Board shall adopt regulations providing for the annual renewal of the permit by charitable organizations having continuing or annually recurring fund raising campaigns. Renewals shall be accompanied by such information as may be required to bring the application statement up to date.

Section 13. *Notice of Intention to Solicit.*

Any charitable organization mentioned under Section 3-C before conducting any solicitation shall give written notice to the Board stating its intention to solicit funds, the basis of its exemption, the purpose of such solicitation, the approximate percentage of collections, after deductions for expenses, to be actually devoted to that purpose, and when such solicitation will be conducted. Written notice shall be given to the Board by the organization, or by someone on its behalf, at least five days in advance of such solicitation. Upon receipt of such written notice, the Board shall issue a form which acknowledges that the organization has complied with the requirements of this Section.

Section 14. *Subsidiary Organizations to be Covered by Permit.* Where any chapter, branch, or affiliate of a charitable organization is supervised and controlled by a superior organization which is incorporated or legally qualified or licensed in New Mexico to do business, or which is doing business within the City of Albuquerque, such chapter, branch, or affiliate shall not be required to obtain a permit as required in Section 7 of this ordinance if the superior or parent organization files an application on behalf of its subsidiary, in addition to or as a part of its own application. Where a subsidiary organization is covered by the permit of its superior organization, the

superior organization shall file any information required of the subsidiary organization in addition to or as a part of its own information.

Section 15. *Application to be Kept Current - Amendments.* A permit granted by the Board to a charitable organization, under the provisions of this ordinance, shall be kept current during its effective term by the charitable organization. Such current status shall be maintained by filing amendments with the Board, in the form prescribed by it, within ten days after any material change in the information previously furnished to the Board. The following changes shall be construed as material for the purposes of this section:

A. Any change in the name of the organization.

B. Any addition or substitution in the names of the salaried or otherwise compensated directors, trustees, other officers, key personnel, or professional fund raisers; or any change in the reported addresses or duties of the officers or individuals who keep the records or are in custody of the contributions.

C. Any change, amounting to five percent or more, in the remuneration to paid to any professional fund raisers.

D. Any change in the general purposes of the organization, intended use of the contributions, method of solicitation, period of time for solicitation, general areas in which such solicitation was to take place or telephone solicitation facilities.

E. Any change in other facts which are declared material by rule or regulation of the Board.

Section 16. *Permit Not Endorsement.* Permits under

this ordinance shall not be deemed to constitute endorsement, by the City of Albuquerque, of any charitable organization so registered and no person or charitable organization shall intentionally claim or infer, directly or indirectly any such endorsement by reason of its permit. This permit does not constitute a waiver of any requirement or provision contained in any ordinance of the City of Albuquerque or state or federal law.

Section 17. *Application and Information Public Records.* The application and all information documents, and reports filed with the Board under this ordinance are matters of public record and shall be, subject to reasonable regulation, open to public inspection. The names of donors and amounts of their contributions shall not be required.

Section 18. *Identification Card.* Every person who solicits contributions on a face-to-face basis for or on behalf of a charitable organization which is required to obtain a permit under this ordinance, shall have visible for prospective contributors an identification card to be provided by the City of Albuquerque which shall include the following information in legible form.

A. The name of the charitable organization for which the contributions are solicited;

B. The name of the person soliciting contributions;

C. The permit number and the dates such permit is valid;

D. Such other information, from the application statement, as may be required by reasonable rule or regulation of the Board for the protection of the public. The Board shall prescribe the form of such identification card.

The card shall be exhibited to any person from whom a contribution is requisted or, on demand, to any police or law enforcement officer.

Section 19. *Posted Property.* Except where he has been requested or invited to do so by the owner or occupant of such property, it is unlawful for any person to solicit, to commit an act of solicitation in or upon any premises if required by anyone not to do so, or if there is placed on such premises in a conspicuous place near the entrance thereof a sign bearing the words: "No Trespassing," "No Peddlers," "No Agents," "No Solicitors," "No Advertisements" or any similar notice indicating in any manner that the occupants of said premises do not desire to be molested or have their right of privacy disturbed.

Section 20. *Manner of Conducting Paid Telephone Solicitations.* Telephone solicitations by paid telephone solicitors shall not be conducted on Saturdays, Sundays or holidays or during the hours of 8 p.m. to 9 a.m. on any day of the week. Paid telephone solicitors shall be required to give the person solicited the following information:

A. The solicitor must state that he is a paid telephone solicitor.

B. The solicitor must give his name, the name of the organization by which he is employed and the charitable purpose for which the solicitation will be used.

Section 21. *Books, Records and Contracts.* Upon request by the Board, the charitable organization shall make available for inspection by the Board all books, records, and contracts relating to charitable solicitations, at any reasonable time before the application is granted, or dur-

ing the time a permit is in effect, or within two years after a permit has expired. Books, records, contracts, and other materials of the organization shall not be matters of public record, except as otherwise provided for by this ordinance.

Section 22. *Financial Statements - Special Reports.*

A. Within ninety days following the close of its fiscal year every charitable organization which is required to have a permit and which has received contributions during such fiscal year shall file with the Board a financial statement, containing the following information on forms provided by the Board.

1. The gross amount of the contributions pledged and the gross amount collected;

2. The amount thereof applied to charitable purposes with a statement indicating the major categories to which disbursements were made as may be required either by general rule or by specific written request of the Board;

3. The aggregate amount paid and to be paid for the costs of such solicitation;

4. The amounts paid and to be paid to professional fund raisers. Financial statements shall conform to the accounting and reporting procedures set forth in the "Audit Guides" published by the American Institute of Certified Public Accountants or shall conform to the generally accepted standards of financial accounting and reporting for the organization's particular field.

Section 23. *Violations - Suspensions and Revocation of the Permit - Hearing.*

A. If the Board determines following notice and hearing that a person has:

1. Violated any provision of this ordinance;

2. Directly or through an agent or employee engaged in any false, deceptive, or misleading advertising, promotional, or sales methods in soliciting for a charitable organization; or

3. Violated any lawful order, rule or regulation of the Board;

the Board shall immediately suspend the permit and give the permit holder written notice by registered mail of a hearing to be held within 14 working days before the Mayor to determine whether or not the permit should be revoked. This notice must contain a statement of the facts upon which the Board has acted in suspending the permit.

B. At the hearing the permit holder, and any other interested person, shall have the right to present evidence as to the alleged facts upon which the Board based the suspension of the permit and any other facts which may aid the Mayor in determining whether this ordinance has been violated. If, after such hearing, the Mayor finds that the ordinance has been violated, he shall revoke the permit and cause to be filed within five business days after the hearing, in the office of the City Clerk for public inspection, and served upon the permit holder and all interested parties participating in the hearing, a written statement of the facts upon which such finding is based. If after such hearing, the Mayor finds that the ordinance has not been violated, he shall within five business days after the hearing give to the permit holder a written statement cancelling the suspension of the permit and stating that no violation or misrepresentation was found to have been committed.

Section 24. ***Penalties.*** **Any person violating any of the provisions of this ordinance or filing, or causing to be filed, an application for a permit under this ordinance containing false or fraudulent misstatements shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $300.00, or shall be imprisoned for not more than 90 days or may be punished by both fine and imprisonment. Each day of violation shall be considered a separate offense.**

Section 25. ***Severability.*** **If any section, subsection, sentence, clause, word or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Council, the governing body of the City of Albuquerque, hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, word or phrase thereof irrespective of any one or more sections, subsections, sentences, clauses, words or phrases being declared unconstitutional or otherwise invalid.**

Section 26. ***Repealing Clause.*** **Commission Ordinance No. 2133 is hereby repealed.**

Section 27. ***Effective Date and Publication.*** **This ordinance shall become effective December 1, 1975 and shall be published in full.**

PASSED AND ADOPTED THIS 3rd day of November, 1975.